

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**ACTUS, LLC,**

**Plaintiff,**

**v.**

**BANK OF AMERICA CORP., et al.**

**Defendants.**

**CIVIL ACTION NO. 2:09-cv-102-TJW**

**JURY TRIAL DEMANDED**

**PLAINTIFF’S ANSWER TO DEFENDANT  
WESTERN UNION FINANCIAL SERVICES’ COUNTERCLAIMS**

Plaintiff Actus, LLC (“Actus”) hereby responds to each paragraph of Defendant Western Union Financial Services’ (“Western Union”) counterclaims as follows, wherein each and every paragraph is hereby incorporated by reference into each and every answer to each and every Count:

**COUNTERCLAIMS**

**PARTIES**

1. Admitted.
2. Admitted.

**JURISDICTION AND VENUE**

3. Admitted.
4. Admitted.

**FIRST COUNTERCLAIM**  
**Declaratory Judgment of Noninfringement of U.S. Patent No. 7,328,189**

5. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 1 – 4 of Western Union’s Counterclaims above, as if fully set forth herein.

6. Actus admits that in its complaint, it alleges that Western Union infringes the ‘189 patent. Actus denies the remainder of the allegations in paragraph 6 of Western Union’s Counterclaims.

7. Actus admits that an actual and justiciable controversy exists between Actus and Western Union. Actus denies all allegations not expressly admitted.

**SECOND COUNTERCLAIM**  
**(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,249,099)**

8. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 1 – 7 of Western Union’s Counterclaims above, as if fully set forth herein.

9. Actus admits that in its complaint, it alleges that Western Union infringes the ‘099 patent. Actus denies the remainder of the allegations in paragraph 9 of Western Union’s Counterclaims.

10. Actus admits that an actual and justiciable controversy exists between Actus and Western Union. Actus denies all allegations not expressly admitted.

**THIRD COUNTERCLAIM**  
**(Declaratory Judgment of Invalidity of U.S. Patent No. 7,328,189)**

11. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1-10 of Western Union’s Counterclaims above, as if fully set forth herein.

12. Admitted.

13. Denied.

14. Actus admits that an actual and justiciable controversy exists between Actus and Western Union. Actus denies all allegations not expressly admitted.

#### **FOURTH COUNTERCLAIM**

##### **(Declaratory Judgment of Invalidity of U.S. Patent No. 7,249,099)**

15. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1 – 14 of Western Union’s Counterclaims above, as if fully set forth herein.

16. Admitted.

17. Denied.

18. Actus admits that an actual and justiciable controversy exists between Actus and Western Union. Actus denies all allegations not expressly admitted.

#### **RESEPNSE TO PRAYER FOR RELIEF IN WESTERN UNION’S COUNTERCLAIMS**

Actus denies that Western Union is entitled to any of the relief requested in its Prayer.

#### **PRAYER FOR RELIEF**

In addition to the relief requested in its Second Amended Complaint, Actus respectfully requests a judgment against Western Union as follows:

- A. That Western Union take nothing by its Counterclaims;
- B. That the Court award Actus all costs and attorneys’ fees incurred in defending against Western Union’s Counterclaims; and
- C. Any and all further relief that the Court deems just and proper.

Dated: September 9, 2009

Respectfully submitted,

/s/ William E. Davis, III  
William E. Davis, III  
TX State Bar No. 24047416

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service were served with a true and correct copy of the foregoing via email on this 9th day of September, 2009.

/s/ William E. Davis, III  
William E. Davis, III